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No. 84-83

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

GLADYS L. TRAPF,
Appellant,

vs.

OSCAR LOHR and GEORGE C. LEACHMAN,
COLLECTOR OF REVENUE FOR ST. LOUIS COUNTY, MISSOURI,
Appellees.

On Appeal From The Supreme Court Of The State Of Missouri

APPELLEE GEORGE LEACHMAN'S MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

THOMAS W. WEHRLE
St. Louis County Counselor

ANDREW J. MINARDI
Associate County Counselor

DON R. WILLIAMS
Associate County Counselor
41 South Central
Clayton, Missouri 63105
(314) 889-2042

Attorneys for Appellee
George C. Leachman

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

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MOTION OF APPELLEE

Appellee George C. Leachman moves this Court to dismiss Appellant's appeal for want of jurisdiction in this Court, or, in the alternative, to affirm the decision of the Supreme Court of Missouri en banc entered on March 20, 1984, from which the Appellant has taken an appeal pursuant to 28 U.S.C. 1257(2).

STATEMENT

The appellee, George C. Leachman, is the Collector of Revenue for St. Louis County, Missouri, and collects real estate taxes pursuant to Chapter 140 R.S.Mo., known as the Jones-Munger Act. As a courtesy, appellee sends yearly tax bills to the owners of over 350,000 taxable real estate parcels in St. Louis County in autumn of each year, and in Missouri, real estate taxes become delinquent if not paid by January 1st of the next year. In April of each year, computerized notice is likewise mailed to all owners whose taxes are delinquent. The evidence in this case is undisputed that the appellant wrote to appellee in April of 1978 concerning her delinquent taxes and that she had previously received tax bills addressed to herself and her ex-husband but did not open them, yet admitted that by the terms of her 1974 dissolution of marriage, she got the house and had to pay the taxes, yet failed to record the property in her name alone and failed to pay any real estate taxes in 1974, 1975, 1976 and only made her first inquiry in 1978. The facts are clear that the appellant was smart enough to keep up her yearly home insurance payments, yet the appellant would have the court believe she was too "inexperienced" to deal with her taxes on a yearly basis.

None of the lower courts believed from the facts that appellant was denied due process. The trial court found for appellant originally because that Court felt that the abbreviations used in the notice were not authorized by statute, but found the constitutional issue to be "without merit". The Missouri Court of Appeals in St. Louis reversed that decision on the ground that the abbreviations were proper, in its view, and that the procedures used by appellee in notifying appellant did not deprive her of due process.

Shortly after that decision, the case of *Mennonite Board of Missions v. Adams,* 462 U.S. ____, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983), was handed down by this court, and because of the

possible effect of that case upon tax sales, the Court of Appeals transferred the case (on appellant's motion) to the Supreme Court of Missouri for its consideration. In its decision on this case, as it mentions in its opinion (appellant's brief, page A-16), the Supreme Court of Missouri En Banc was aware of another tax sale case styled *Lohr v. Cobur,* 654 S.W.2d 883 (Mo. banc 1983), in which it followed the *Mennonite* case regarding a deed of trust, so the Missouri Supreme Court was well aware of the decision. Nevertheless, in deciding the case at bar, the Supreme Court also reversed the trial court and concluded that the facts showed that the appellant was not deprived of due process because of what the appellee actually did to make her aware of the delinquent taxes and the sale. At no point did the Supreme Court declare Section 140.170 R.S.Mo. to be constitutional or unconstitutional because the facts of the case made it unnecessary to do so.

BRIEF IN SUPPORT OF APPELLEE'S MOTION

I. This Court Lacks Appellate Jurisdiction

This Court is without appellate jurisdiction pursuant to 28 U.S.C. 1257(2) because this case does not involve a substantial federal question. The Missouri Supreme Court did not directly pass upon the constitutionality of Section 140.170 of the Missouri Revised Statutes of 1978, as claimed by appellants, because the case turned on the court's finding of facts.

What is apparent from the facts is that even assuming that Missouri Statute Section 140.170 required mailing yearly tax bills in September and tax delinquency and/or tax sale notices each April, as was actually done in this case involving appellant's property, the appellant would complain that she had been denied due process. In other words, it would have made no difference in this case if the requirements were in the statute, because as a matter of what three Missouri Courts believed to be the facts, no violation of due process occurred. Inasmuch as

there is no substantial federal question for the Court to consider, it lacks jurisdiction and for this reason, the appeal should be dismissed.

II. If This Court Finds Jurisdiction It Should Affirm The Lower Court Decision

In his alternative to his motion to dismiss, appellee has moved this Court to affirm the decision of the Missouri Supreme Court En Banc of March 20, 1964. That Court took the *Mennonite* case into consideration in reviewing the case at bar, for it had based its decision in the earlier case of *Lohr v. Cobur Corp.*, 654 S.W.2d 883 (Mo. Banc 1983), on the changes brought about by *Mennonite* and was well aware of its impact upon delinquent real estate tax sales as they affected interests other than those of the owner of record. In this case, however, no interest was affected except that of the resident owner, who apparently ignored the tax sale position of her property after having been advised of it and making inquiry about it.

Certainly a line must be drawn somewhere in the determination of how far the appellee must go to notify taxpayers of their obligations under the tax laws of Missouri, and under the facts of this case, the Missouri Supreme Court unanimously concluded that the appellee had gone far enough. For the foregoing reasons, the judgment of the Supreme Court of Missouri should be affirmed.

CONCLUSION

For the foregoing reasons, Appellant's appeal should be dismissed for want of jurisdiction in this Court, or, in the alternative, the judgment of the Missouri Supreme Court should be affirmed.

Respectfully submitted,

THOMAS W. WEHRLE
ST. LOUIS COUNTY
COUNSELOR

ANDREW J. MINARDI
ASSOCIATE COUNTY
COUNSELOR

DON R. WILLIAMS
ASSOCIATE COUNTY
COUNSELOR
41 S. Central
Clayton, Missouri 63105
889-2042

Attorneys for Appellee